

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: HICKS, Isreal

Attorney Docket No. HICK-1-1002

Serial No.: 10/081,928

Group Art Unit: 3632

Filing Date: February 20, 2002

Examiner: CHAN, Korie H.

Title: HOIST TIRE HANGER

TO THE DIRECTOR

APPEAL BRIEF PURSUANT TO 37 C.F.R. 41.37



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CASES

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STATUTES

35 U.S.C. § 102(b)	passim
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PATENT REFERENCES

U.S. Patent No. 5,816,016 (Zarnick)	4, 10-14
International Patent Publication No. WO 00/55031 (Starling et al.)	4, 10, 15-17

I. REAL PARTY IN INTEREST

The real party in interest in the pending patent application is the inventor Isreal Hicks of Arlington, Washington.

II. RELATED APPEALS AND INTERFERENCES

There are no other appeals or interferences known to appellant or appellant's counsel that will directly affect, be directly affected by, or have a bearing in the Board's decision in the pending appeal.

III. STATUS OF THE CLAIMS

Claims 1-11, 21-25, 27-28, 31-47, 52, 59, and 61 are canceled, Claims 12-20 are withdrawn, and Claims 26, 29-30, 48, 50-51, 53-58, and 60 are currently pending and stand rejected. At issue in this appeal are Claims 26, 29, 30, 48, 50, 51, 53-55, 57, 58, and 60.

In a final Office Action mailed May 29, 2007, Claims 26, 29, 30, 48, 50, 51, 53-55, 57, 58, and 60 were rejected under 35 U.S.C. §102(b) as being anticipated by U.S. Patent No. 5,816,016 ("Zarnick"). Claims 58 and 60 were rejected under 35 U.S.C. §102(b) as being anticipated by PCT Document No. WO 00/55031 ("Starling").

IV. STATUS OF AMENDMENTS

No amendments have been filed since the Examiner's May 29, 2007 final rejection.

V. SUMMARY OF CLAIMED SUBJECT MATTER

The invention is a tire-hanging device including a hoist wrap section, an elongated section, and a tire hanging section. The hoist wrap section is a generally U-shaped section configured to fit over a horizontal support member of a vehicle hoist. The elongated section is a

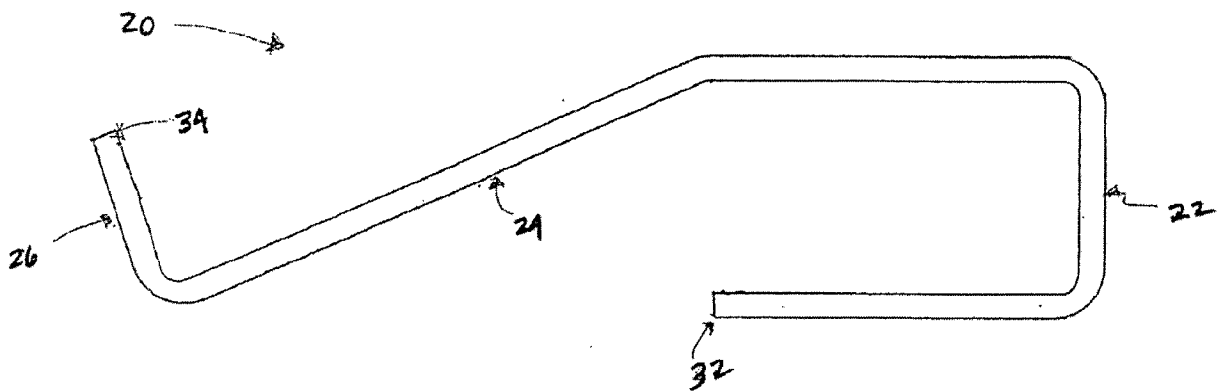
generally straight section located between and at an angle to the hoist wrap section and the tire hanging section, and can include a pivot joint to allow rotation of the tire hanging section with respect to the hoist wrap section. The tire hanging section is a generally straight member of sufficient length to hold an automotive tire during use, with an end configured to be inserted through an axle hole of an automotive wheel.

Independent Claim 26 reads as follows:

26. A tire hanger comprising:

- a device configured to removably engage a horizontal support member of a vehicle hoist at a user-selected position, the device having:
- a first end arranged to be mounted by at least partially circumscribing the horizontal support member without the need for fasteners;
- a second end having a hook configuration to engage a wheel; and
- a middle section disposed between the first end and the second end, the middle section having a length suitable for engaging the hook configuration with the wheel.

An embodiment of the tire hanging device of claim 26 is shown in Figure 7 as published in U.S. Patent Application Publication No. 2003/0155475, below.



The “first end” of Claim 26 is also referred to in the specification as the hoist wrap section, “a generally U-shaped section having one end attached to an end of the elongated section (24) and the other end of the hoist wrap section (22) having a free end (32). A generally U-shaped structure of the hoist wrap section is designed to fit over the horizontal member of the automobile lift. The free end (32) portion of the hoist wrap section (22) is designed to allow a tire hanging device 20 to be easily attached to, and removed from the automobile lift” (p. 2, lines 8-13). Figures 3 and 4, below, show the tire hanger “mounted by at least partially circumscribing the horizontal support member without the need for fasteners,” as required by Claim 26.

The “second end” of Claim 26 is also referred to as the tire hanging section, and is “connected at an angle to the elongated section (24). The tire hanging section (26) generally consists of a straight member of sufficient length to hold an automotive tire while the tire-hanging device (20) is being employed. The tire hanging section (26) employs an open end (34), which is inserted through the axle hole of an automotive wheel thereby serving as the holding mechanism for the tire” (Appellant, p. 2, lines 22-26) and points away from the hoist. Depending on the width of the tire in relation to the length of the tire hanging section (26), the tire need not rub against the hoist, but may depending on tire placement relative to the tire hanging section (26) (Appellant, p. 3, lines 7-8). Moreover, because the tire hanging section (26) engages the axle hole of a tire, ergonomics is enhanced over the prior art of record of tire hanging devices that requires hanging through a smaller lug nut hole (“mounting hole” per page 5, lines 17-20 of Starling as described below) in which the worker has to hold the tire awkwardly to aim the tire to engage the smaller lug not hole.

The “middle section” of Claim 26 is also referred to as the elongated section, “a generally straight section located between and at an angle to the hoist wrap section 22 and the tire hanging section 26” (p. 2, lines 14-15).

Independent Claim 30 reads as follows:

30. A tire hanger comprising:

- a device configured to removably engage a horizontal support member of a vehicle hoist at a user-selected position, the device having:

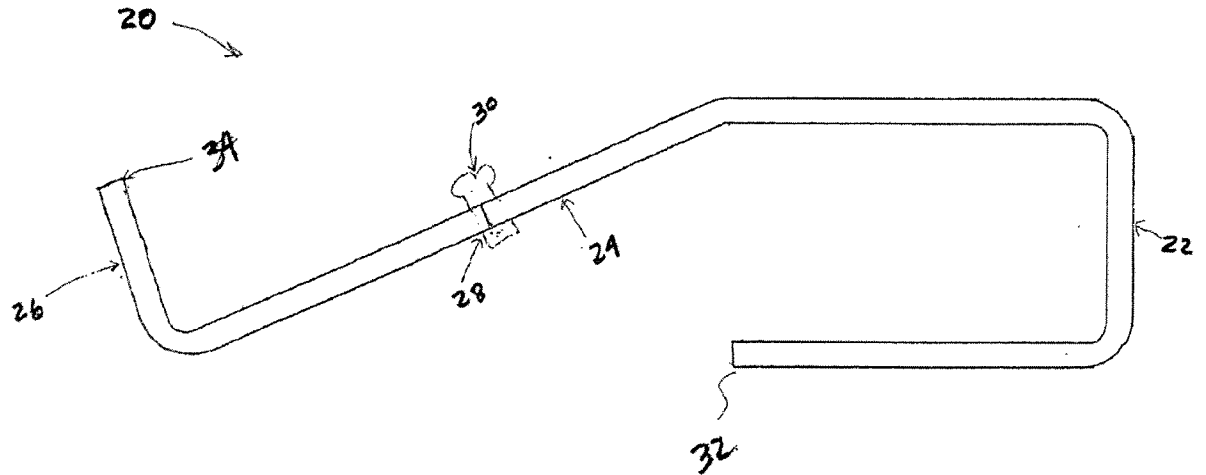
- a first end arranged to be mounted by at least partially circumscribing the horizontal support member without the need for fasteners;

- a second end having a hook configuration to engage a wheel; and

- a middle section disposed between the first end and the second end, the middle section including two portions connected by a pivotable joint, the middle section having a length suitable for engaging the hook configuration with the wheel;

- wherein a weight bearing upon the second end is conveyed through the middle section to the first end to secure the first end on the horizontal support member.

An embodiment of the tire hanger of Claim 30 is shown in Figure 1, as published in U.S. Patent Application Publication No. 2003/0155475, below.



As Claim 30 uses almost identical language to Claim 26, support for Claim 30 is the same as support for Claim 26, except with respect to the “middle section.” The “middle section including two portions connected by a pivotable joint” is also referred to as the “elongated section,” and “[l]ocated in the elongated section 24 is a pivotable joint 28, which allows rotating the tire hanging section 26 out of the way when the device is not being employed” (p. 2, lines 15-17).

Independent Claim 54 reads as follows:

54. (rejected) A tire hanger comprising:

a first end, the first end being a U-shape with a horizontal top portion, a vertical rear portion, and a horizontal bottom portion, the U-shape defining a recess adapted to removably engage a horizontal support member of a vehicle hoist without fasteners; and,

a second end, the second end connected to the first end, the second end having a hook configuration and a sufficient length for engaging a wheel;

wherein a weight bearing on the hook configuration is conveyed to the first end to secure the first end to the horizontal support member of the vehicle hoist.

An embodiment of the tire hanging device of claim 54 is shown in Figure 7, above.

The “first end suitably bent and arranged to engage to the horizontal support member” of Claim 54 is also referred to as the hoist wrap section, “a generally U-shaped section having one end attached to an end of the elongated section 24 and the other end of the hoist wrap section 22 having a free end 32. A generally U-shaped structure of the hoist wrap section is designed to fit over the horizontal member of the automobile lift. The free end 32 portion of the hoist wrap section 22 is designed to allow a tire hanging device 20 to be easily attached to, and removed from the automobile lift” (p. 2, lines 8-13).

The “second end” of Claim 54 combines the tire hanging section and the elongated section, and thus “[t]he tire hanging section is connected at an angle to the elongated section 24. The tire hanging section 26 generally consists of a straight member of sufficient length to hold an automotive tire while the tire-hanging device 20 is being employed. The tire hanging section 26 employs an open end 34, which is inserted through the axle hole of an automotive wheel thereby serving as the holding mechanism for the tire” (p. 2, lines 22-26).

Independent Claim 58 reads as follows:

58. (rejected) A tire hanger comprising:

- a hoist wrap section having an open end arranged to removably engage with at least three sides of a horizontal support member of a vehicle hoist;
- a tire hanging section arranged to engage a wheel; and

a middle section disposed between the hoist wrap section and the tire hanging section; whereby the hoist wrap section is shaped so as to contact and slidably engage the at least three sides of the horizontal support member.

Figure 7 (above) shows an embodiment of Claim 58.

The “hoist wrap section” of Claim 58 is “a generally U-shaped section having one end attached to an end of the elongated section 24 and the other end of the hoist wrap section 22 having a free end 32. A generally U-shaped structure of the hoist wrap section is designed to fit over the horizontal member of the automobile lift. The free end 32 portion of the hoist wrap section 22 is designed to allow a tire hanging device 20 to be easily attached to, and removed from the automobile lift” (p. 2, lines 8-13). Figure 4 is a photograph of the tire hanger removably and slidably engaged with at least three sides of a horizontal support member of a vehicle hoist, as required by Claim 58; “[f]urther, as can be seen in this photograph the tire-hanging device 20 is locatable anywhere along the horizontal lifting arm” (p. 3, lines 5-6).

The “tire hanging section” is “connected at an angle to the elongated section 24. The tire hanging section 26 generally consists of a straight member of sufficient length to hold an automotive tire while the tire-hanging device 20 is being employed. The tire hanging section 26 employs an open end 34, which is inserted through the axle hole of an automotive wheel thereby serving as the holding mechanism for the tire” (p. 2, lines 22-26).

The “middle section” is also referred to as the elongated section, “a generally straight section located between and at an angle to the hoist wrap section 22 and the tire hanging section 26” (p. 2, lines 14-15).

VI. GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL

The issue presented for review is whether the Examiner improperly rejected the pending claims. In other words:

(1) Were Claims 26, 29, 30, 48, 50, 51, 53-55, 57, 58, and 60 improperly rejected under 35 U.S.C. §102(b) as being anticipated by Zarnick.

(2) Were Claims 58 and 60 improperly rejected under 35 U.S.C. §102(b) as being anticipated by Starling.

VII. ARGUMENT

A. CLAIMS 26, 29, 30, 48, 50, 51, 53-55, 57, 58, AND 60 WERE IMPROPERLY REJECTED UNDER 35 U.S.C. § 102 AS BEING ANTICIPATED BY ZARNICK

1. Reference Relied Upon For §102(b) Rejection

In the rejection under 35 U.S.C. § 102 (b), the Office Action rejected Claims 26, 29, 30, 48, 50, 51, 53-55, 57, 58, and 60 as being unpatentable over U.S. Patent No. 5,816,016 (hereinafter “Zarnick”).

Figure 2 of Zarnick is reproduced here.

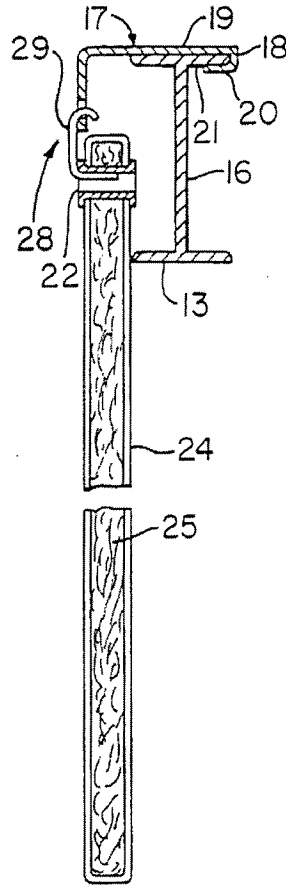


FIG. 2

The device of Zarnick is a hook clip for hanging acoustical panels from I-beams. The hook clip 17 has a hook end 18 that hooks on an upper flange of an I-beam, and the acoustical panel holds the hook end 18 securely on the flange. Preferably the hook end is bent so that the sides of the hook end 19, 20 grip the upper flange. The clip end comprises a rigid bent portion 29 one end of which secures the panel, and another end of which fits within an opening in the hook clip 17. (Col. 2, lines 3-13.)

2. The Claims Were Improperly Rejected Under §102(b)

Claims 26, 29, 30, 48, 50, 51, 53-55, 57, 58, and 60 were improperly rejected under 35 U.S.C. § 102(b) as being anticipated by Zarnick. The prior art patent cited in a 35 U.S.C. §102(b) rejection must disclose each and every limitation found in the claims, either expressly or inherently. *Rockwell Intern. Corp. v. U.S.*, 147 F.3d 1358, 1363 (Fed. Cir. 1998); *Electro Med. Sys. S.A. v. Cooper Life Sciences*, 34 F.3d 1048, 1052 (Fed. Cir. 1994). Each claim limitation must be found in a single prior art reference; references cannot be combined under §102. *Apple Computer, Inc. v. Articulate Systems, Inc.*, 234 F.3d 14, 20 (Fed. Cir. 2000). Omission of any claimed element, no matter how insubstantial, is grounds for traversing a rejection based on §102. *Connell v. Sears, Roebuck & Co.*, 722 F.2d 1542 (Fed. Cir. 1983).

In the present case, the rejection is improper, and fails to establish anticipation under §102, because the invention of Claims 26, 30, 54, and 58 includes limitations not present, either expressly or inherently, in the cited reference.

(a) The limitations on Applicant's "first end" are not disclosed by Zarnick.

Zarnick fails to disclose the "first end" as recited in Claims 26, 30, and 54 (or the "hoist wrap end" of Claim 58). The Claims include the following limitation not found in the Zarnick reference.

- "a first end arranged to be mounted by at least partially circumscribing the horizontal support member without the need for fasteners"

The hook end 18 of Zarnick is not "arranged to be mounted by at least partially circumscribing the [vehicle hoist] horizontal support member without the need for fasteners." Zarnick's "hook clip [] consists of a 1"-1½" metal strip with a bend section of metal at a hook

end...the hook end is attached to an upper flange of the I-beam” (col. 1, lines 38-40). A user of the method of Zarnick “lock[s] the hook end (18) on the opposite upper flange of the I-beam...[p]referably the hook end is bent so that the sides of the hook end (19) and (20) grip the upper flange” (col. 2, lines 1-8). Applicant is unsure how to interpret the dimensions given for the hook clip, but the least favorable (to Applicant) interpretation is that the horizontal portion of the hook clip (as shown in Fig. 2) is 1½” long; using this dimension yields a hook end that is sized to accommodate an I-beam flange no more than 0.09” thick. Applicant asserts that it is impossible to “partially circumscribe[e] the [vehicle hoist] horizontal support member”, as required by the claims, with a hook end sized to accommodate a 0.09” vehicle hoist horizontal support member, because there are no vehicle hoist horizontal support members with a width of 1.5” and a thickness of 0.09 inches or less. Additionally, the hook end (19) of Zarnick faces towards the I-beam, whereas Applicant’s hook end faces away from the car hoist beam. This results in the acoustical panel (15) of Zarnick touching or rubbing against and being stabilized by the lower portion of the I-beam (13). In contrast, Applicant’s tire hanging section 26 of tire hanging device 20 points away from the hoist *to self-support a tire without requiring hoist stabilization*. With wider tires, the edge of the tire may engage the hoist. In sum, Applicant’s tire hanging device (20) is configured differently from Zarnick’s second hook end such that the Appellant’s hook end (26) points away the hoist and does not rely *solely* on hoist stabilization of the tire being hanged by the tire-hanging section (26) whereas Zarnick requires its hanged acoustical panel (15) to be stabilized by the I-beam (13) as illustrated in Zarnick’s Figure 2.

(b) The limitations on Applicant’s “second end” are not disclosed by Zarnick.

Zarnick fails to disclose the “second end” as recited in Claims 26, 30, and 54 (or the “tire hanging section” of Claim 58). The Claims include the following limitation not found in the Zarnick reference.

- “a second end having a hook configuration to engage a wheel”

The clip end 28 of Zarnick does not have “a hook configuration to engage a wheel” as required by Applicant’s Claims 26, 30, 54, and 58. Given Zarnick’s preferred dimensions (above), the horizontal length of the clip end 28 is about 0.53”. Thus, Zarnick’s second end is capable of engaging only those wheels with a width of no more than 1.06” (assuming that a tire up to twice as wide as the horizontal length of the clip end 28 would be sufficiently supported by the clip end 28). Applicant is not aware of any vehicle wheel meeting the dimensions required for use with Zarnick’s device.

(c.) The limitations on Applicant’s “middle section” are not disclosed by Zarnick.

Zarnick fails to disclose the “second end” as recited in Claims 26, 30, and 54 (or the “tire hanging section” of Claim 58). The Claims include the following limitation not found in the Zarnick reference.

- “a middle section disposed between the first end and the second end...having a length suitable for engaging the hook configuration with the wheel”

Zarnick’s “middle section” does not have a “length suitable for engaging the hook configuration with the wheel” as required by Claims 26 and 30. Applicant assumes that the length of Zarnick’s “middle section” is the combination of the lengths of the vertical portion of the hook clip 17 and the vertical portion of the clip end 28. That vertical distance, from the horizontal part of the rigid bent portion 29 to the horizontal portion of the hook end 18, is about

1.15". Thus, taking the preferred dimensions given in Zarnick, Zarnick's middle section has a length suitable for engaging the hook configuration with a wheel having a radius of no more than 1.15". Applicant is unaware of any wheels with a radius of 1.15" or less, and thus asserts that the length of Zarnick's middle section is completely unsuitable for engaging the hook configuration with a wheel, as required by the claims.

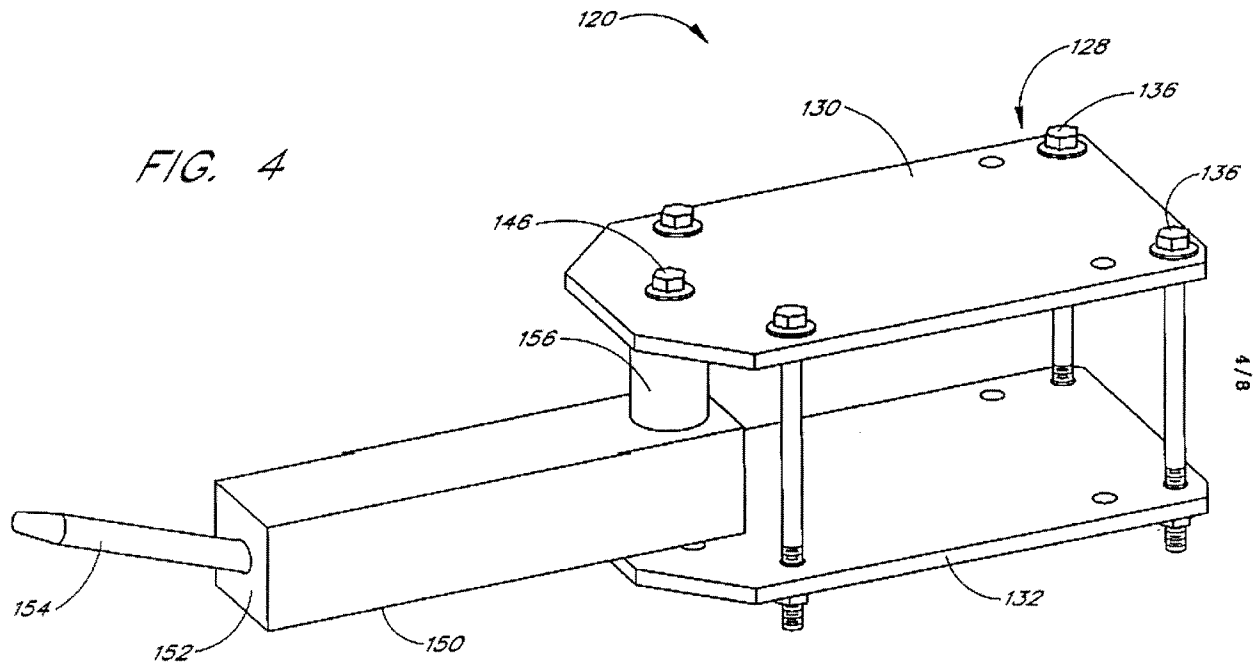
It is clear, then, that all of the limitations in Applicant's appealed claims are not taught by the cited reference. Therefore, the rejection under §102 was improper because all of the above-mentioned limitations are not taught, disclosed, or suggested in a single prior art reference. *Rockwell Intern. Corp. v. U.S.*, 147 F.3d 1358, 1363 (Fed. Cir. 1998); *Electro Med. Sys. S.A. v. Cooper Life Sciences*, 34 F.3d 1048, 1052 (Fed. Cir. 1994); *Apple Computer, Inc. v. Articulate Systems, Inc.*, 234 F.3d 14, 20 (Fed. Cir. 2000); *Connell v. Sears, Roebuck & Co.*, 722 F.2d 1542 (Fed. Cir. 1983).

B. CLAIMS 58 AND 60 WERE IMPROPERLY REJECTED UNDER 35 U.S.C. §102 AS ANTICIPATED BY STARLING

1. Reference Relied Upon for §102(b) Rejection

In the rejection under 35 U.S.C. § 102, the Office Action rejected Claims 58 and 60 as being unpatentable over PCT Document No. WO 00/55031 (hereinafter "Starling").

Figure 4 of Starling is reproduced below.



The device of Starling is an apparatus (120) for supporting automotive tires having a hanger pin (154) adapted to fit through the mount hole of a vehicle wheel. The apparatus is intended to be installed on an automotive hoist at a height approximately the same as that of a tire of a vehicle disposed on the hoist. A worker removing a wheel from the vehicle disposed on the hoist (22) can thus hang the wheel on the apparatus without significantly bending at the waist. (Abstract). The hanger pin (154) of Starling engages with "a mounting hole of the tire/wheel assembly" per page 5, lines 18-20 of Starling. These mounting holes are commonly known as lug nut holes, which are smaller than axle holes of tire/wheel assemblies that Appellant's tire hanging section (26) engages. Moreover, Starling is limited to only those tires having lug nut holes.

2. The Claims Were Improperly Rejected Under §102(b)

Claims 58 and 60 were improperly rejected under 35 U.S.C. § 102(b) as being anticipated by Starling. The prior art patent cited in a 35 U.S.C. §102 rejection must disclose each and every limitation found in the claims, either expressly or inherently. *Rockwell Intern. Corp. v. U.S.*, 147 F.3d 1358, 1363 (Fed. Cir. 1998); *Electro Med. Sys. S.A. v. Cooper Life Sciences*, 34 F.3d 1048, 1052 (Fed. Cir. 1994). Each claim limitation must be found in a single prior art reference; references cannot be combined under §102(b). *Apple Computer, Inc. v. Articulate Systems, Inc.*, 234 F.3d 14, 20 (Fed. Cir. 2000). Omission of any claimed element, no matter how insubstantial, is grounds for traversing a rejection based on §102(b). *Connell v. Sears, Roebuck & Co.*, 722 F.2d 1542 (Fed. Cir. 1983).

In the present case, the rejection is improper, and fails to establish anticipation under §102(b), because the invention of Claims 58 and 60 includes limitations not present, either expressly or inherently, in the cited reference.

a. The limitations on Applicant's "hoist wrap section" are not disclosed by Starling.

Starling fails to disclose the "hoist wrap section" as recited in Claims 58 and 60. The Claims include the following limitation not found in the Starling reference.

- "a hoist wrap section having an open end arranged to removably engage with at least three sides of a horizontal support member of a vehicle hoist"

The "tire support bracket" 120 of Starling "comprises a mount body 128 having top and bottom mount plates 130, 132 which, when installed on a hoist 22, are disposed on opposite sides of the horizontal lift arm 26. Bolts 136 operate between the top and bottom mount plates 130,

132 to pull the plates together about the lift arm 26” (page 6, lines 11-16). As can be clearly seen in Starling’s Figure 4, and indeed as pointed out in the May 29, 2007 final Office Action, there is no “open end” of Starling’s hoist wrap section. Instead, as stated in the Office Action, “between the outer pair bolts 136 are opened spaces” (5/29/07 Office Action, page 3, lines 2-4). As the open spaces of Starling are not an open end as required by Claims 58 and 60, Starling cannot anticipate Applicant’s Claims 58 and 60.

Starling fails to disclose engaging the axle hole of a tire/wheel assembly as taught by Appellant. Instead, the hanger pin (154) of Starling engages with “a mounting hole of the tire/wheel assembly” per page 5, lines 18-20 of Starling. Moreover, Starling is limited to mounting only tire/wheel assemblies having only mounting holes, and cannot be used for tire/wheel assemblies having axle holes that are larger and ergonomically easier to engage with Appellant’s tire hanging section (26).

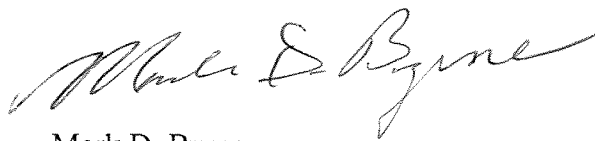
It is clear, then, that all of the limitations in Applicant’s appealed Claims 58 and 60 are not taught by the cited reference. Therefore, the rejection under §102 was improper because all of the above-mentioned limitations are not taught, disclosed, or suggested in a single prior art reference. *Rockwell Intern. Corp. v. U.S.*, 147 F.3d 1358, 1363 (Fed. Cir. 1998); *Electro Med. Sys. S.A. v. Cooper Life Sciences*, 34 F.3d 1048, 1052 (Fed. Cir. 1994); *Apple Computer, Inc. v. Articulate Systems, Inc.*, 234 F.3d 14, 20 (Fed. Cir. 2000); *Connell v. Sears, Roebuck & Co.*, 722 F.2d 1542 (Fed. Cir. 1983).

VIII. CONCLUSION

For the foregoing reasons, the Examiner's final rejections should be reversed and the pending claims should be allowed. *Connell v. Sears, Roebuck & Co.*, 722 F.2d 1542 (Fed. Cir. 1983).

Respectfully submitted,

BLACK LOWE & GRAHAM^{PLLC}

A handwritten signature in black ink, appearing to read "Mark D. Byrne". The signature is fluid and cursive, with the first name "Mark" and last name "Byrne" being clearly legible.

Mark D. Byrne
Registration No. 50125
Direct Dial: 206.957.2481

APPENDIX A – Claims on Appeal

26. (rejected) A tire hanger comprising:

a device configured to removably engage a horizontal support member of a vehicle hoist at a user-selected position, the device having:

a first end arranged to be mounted by at least partially circumscribing the horizontal support member without the need for fasteners;

a second end having a hook configuration to engage a wheel;

and a middle section disposed between the first end and the second end, the middle section having a length suitable for engaging the hook configuration with the wheel.

29. (rejected) The tire hanger of Claim 26, wherein the middle section is articulated to permit the hook configuration to be pivoted from the first end.

30. (rejected) A tire hanger comprising:

a device configured to removably engage a horizontal support member of a vehicle hoist at a user-selected position, the device having:

a first end arranged to be mounted by at least partially circumscribing the horizontal support member without the need for fasteners;

a second end having a hook configuration to engage a wheel; and

a middle section disposed between the first end and the second end, the middle section including two portions connected by a pivotable joint, the middle section having a length suitable for engaging the hook configuration with the wheel;

wherein a weight bearing upon the second end is conveyed through the middle section to the first end to secure the first end on the horizontal support member.

48. (rejected) The tire hanger of claim 26, wherein the first end is in the form of a U-shape.

50. (rejected) The tire hanger of claim 26, wherein the device is constructed from a rigid material.

51. (rejected) The tire hanger of claim 30, wherein the first end is in the form of a U-shape.

53. (rejected) The tire hanger of claim 30, wherein the device is constructed from a rigid material.

54. (rejected) A tire hanger comprising:

a first end, the first end being a U-shape with a horizontal top portion, a vertical rear portion, and a horizontal bottom portion, the U-shape defining a recess adapted to removably engage a horizontal support member of a vehicle hoist without fasteners; and,

a second end, the second end connected to the first end, the second end having a hook configuration and a sufficient length for engaging a wheel;

wherein a weight bearing on the hook configuration is conveyed to the first end to secure the first end to the horizontal support member of the vehicle hoist.

55. (rejected) The tire hanger of claim 54, wherein the second end overlaps and is pivotably connected to the first end.

57. (rejected) The tire hanger of claim 54, wherein the first end and second end are constructed from a rigid material.

58. (rejected) A tire hanger comprising:

a hoist wrap section having an open end arranged to removably engage with at least three sides of a horizontal support member of a vehicle hoist;

a tire hanging section arranged to engage a wheel; and

a middle section disposed between the hoist wrap section and the tire hanging section; whereby the hoist wrap section is shaped so as to contact and slidably engage the at least three sides of the horizontal support member.

60. (rejected) The hanger of Claim 58, wherein the tire hanging section is a straight member of sufficient length to hold a tire.

APPENDIX B – Evidence Submitted under 37 C.F.R. §§ 1.130, 1.131, 1.132

NONE

APPENDIX C – Decisions Rendered by a Court or the Board in Related Appeals and Interferences

NONE